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677857—46

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 643

BERT O. PETERSON AND MIDWEST HOLDING COMPANY, PETITIONERS

v.

HAROLD L. ICKES, INDIVIDUALLY AND AS SECRETARY OF THE INTERIOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINION BELOW

The district court's memorandum (R. 68) is not reported. The opinion of the Court of Appeals (R. 71–74) is reported in 151 F. 2d 301.

JURISDICTION

The judgment of the Court of Appeals was filed July 2, 1945 (R. 75). A petition for rehearing was denied on September 10, 1945 (R. 82), and the petition for a writ of certiorari was filed on December 7, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether there existed a genuine issue as to the fact that petitioner Midwest Holding Company had actual notice of the proposed cancellation of the oil lease here involved, and if so, whether that fact was material so that summary judgment was improperly granted.

2. Whether petitioner Midwest Holding Company was a "lease owner" within the meaning of Section 17 of the Mineral Leasing Act of February 25, 1920, as amended by the Act of August 21, 1935, 49 Stat. 674, 678, 30 U. S. C., sec. 226, to whom notice of proposed cancellation of an oil lease is required to be given under that section.

STATUTE INVOLVED

Section 17 of the Mineral Leasing Act of February 25, 1920, as amended by the Act of August 21, 1935, 49 Stat. 674, 678, 30 U. S. C. sec. 226, so far as here material, reads as follows:

* * * * *

> Any lease issued after August 21, 1935 under the provisions of this section, except those earned as a preference right as provided in section 14 hereof, shall be subject to cancelation by the Secretary of the Interior after thirty days' notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the land covered by any such lease is known to contain valuable deposits of oil or gas. Such notice in advance of cancela-

tion shall be sent the lease owner by registered letter directed to the lease owner's record post-office address, and in case such letter shall be returned as undelivered, such notice shall also be posted for a period of thirty days in the United States Land Office for the district in which the land covered by such lease is situated, or in the event that there is no district land office for such leased land, then in the post office nearest such land. Leases covering lands known to contain valuable deposits of oil or gas shall be canceled only in the manner provided in section 31 of the Act.

STATEMENT

The judgment which petitioners ask this Court to review affirmed a summary judgment of the district court entered in favor of the respondents (R. 69, 75). Petitioners' complaint, while captioned as one for declaratory judgment (R. 1), prayed for an order directing respondents to reinstate an oil and gas lease formerly issued to and held by petitioner Peterson (R. 8).

In substance the complaint (R. 1–9) alleges these facts:

Peterson received from the General Land Office an oil and gas prospecting permit dated November 26, 1929, on certain lands in Wyoming, pursuant to the Mineral Leasing Act of February 25, 1920 (41 Stat. 437, 441). On or about August 20, 1937, he entered into an operating agreement with Midwest Holding Company which was subsequently

approved by the Department on April 8, 1938. This agreement gave Midwest the right to develop the permit lands for oil purposes and bound it to pay all costs of development, including rentals and costs of bonds and certain royalties to Peterson on the oil produced (R. 2). On or about September 7, 1937, Midwest entered into an agreement with Sha-Wa Petroleum Corporation whereby it transferred to the latter its right to develop the lands embraced in the Peterson permit.

Upon application of the operator pursuant to paragraph 4 of the operating agreement, the Peterson permit was exchanged for a lease under section 13 of the Mineral Leasing Act, as amended by the act of August 21, 1935 (49 Stat. 674, 30 U. S. C. sec. 221). The lease was issued to Peterson on December 31, 1938, for a term of 5 years with an annual rental of $110.25, beginning with the third year of the term. The rental for the third year was due and payable in advance on January 1, 1941, and was not paid. On June 12, 1941, the Land Office sent Peterson, who lived at Armstrong, Iowa, a notice by registered mail of the delinquency and informed him that the lease would be recommended for cancellation unless the rent was paid within 30 days. On July 14, 1941, Peterson's attorney answered by letter, stating that the rental on Peterson's lease should be paid by Midwest, requesting a reasonable length of time to adjust the matter, and promising that Peterson

would pay if Midwest failed to do so. Peterson wrote to John Wight, whom he had previously designated as his attorney in fact and who was also Vice President of Midwest, requesting that Midwest pay the 1941 rental. After alleging these facts, the complaint stated (R. 3–4):

> There is a dispute between the parties to this proceeding whether or not this letter was received by Midwest and whether, in fact, Midwest ever received actual notice of the proposed cancellation from any source. It is, however, an admitted fact that no notice in the form prescribed by the statute was ever given Midwest.

On December 6, 1941, the Land Office wrote to Peterson, informing him that the lease had been recommended for cancellation, but that he would still be required to pay the delinquent rental for 1941. Peterson again wrote to John Wight demanding that the rental be paid, but his letter was returned undelivered. On December 30, 1941, the Department cancelled the lease and notified Peterson of this action on January 13, 1942. The delinquent rental was subsequently paid (R. 4).

On February 11, 1942, Maude L. Brown filed an application for an oil and gas lease on the lands embraced in the Peterson lease. The Land Office wrote Mrs. Brown's counsel on November 6, 1942, that the register of the local land office at Cheyenne had been instructed to request her to pay the first year's rental in advance and that when she had

done so the lease forms would be sent to her for execution. Before Mrs. Brown executed a lease, Midwest telegraphed the Land Office protesting the cancellation of Peterson's lease and requesting that action on Mrs. Brown's application be deferred until it could file further showing. On January 26, 1943, Midwest and Peterson filed a formal application for reinstatement of Peterson's lease. On October 23, 1943, the Commissioner of the General Land Office denied the application; on April 3, 1944, the Secretary of the Interior affirmed the Commissioner's decision and on May 23, 1944, denied a motion for rehearing (R. 5–6).

The complaint further alleges the exhaustion of remedies in the Department and that the only remaining remedy is by application to a court for declaratory judgment (R. 8). The complaint prays that the decisions of the Commissioner and of the Department be vacated because in violation of the applicable statutory provisions, that the Secretary be required to reinstate the Peterson lease, and for such other and further relief as may be proper and just (R. 8–9).

Respondents filed a motion for summary judgment (R. 10) under Rule 56, F. R. C. P., on the grounds that there was no genuine issue as to any material fact and that the complaint failed to state a cause of action. Attached as exhibits to the motion were certified copies of official documents of the Department of the Interior consisting of the

decision of the Secretary of the Interior on petitioners' appeal from the decision of the Commissioner denying the application for reinstatement, the Secretary's decision denying a rehearing, the operating agreement showing the interest of petitioner Midwest Holding Company in the Peterson permit, the assignment by Midwest to Sha-Wa Petroleum Corporation of its rights under the operating agreement, and the application for lease based upon the Peterson permit (R. 11–48).

After hearing the district court entered judgment in favor of respondents (R. 69), and upon appeal the Court of Appeals entered judgment affirming the judgment of the district court (R. 75).[1] A petition for rehearing was denied on September 10, 1945 (R. 82). The petition for a writ of certiorari was filed on December 7, 1945.

ARGUMENT

1. No genuine issue as to a material fact was presented by the pleadings. If the Secretary, in the first instance, and the two courts below, have correctly held that petitioner Midwest Holding Company is not a "lease owner" entitled to notice of the proposed cancellation under section 17 of the Mineral Leasing Act, then the question of Mid-

[1] Through inadvertence the judgment of the court of appeals, as it appears at R. 75, fails to show that the judgment of the district court was affirmed. Respondents understand, however, that a certified copy of the original judgment, showing the affirmance, is on file with the Clerk of this Court.

west's having actual notice is obviously immaterial. Moreover, petitioners' claim that a real issue on that fact was raised by the pleadings is colorable rather than real. Their complaint (Par. 7, R. 3) admitted that Peterson's attorney mailed a letter to Midwest demanding that it pay the rental then long overdue. The date of this letter was "at or about July 14, 1941" (R. 21). The inference is that it was delivered. Petitioners' complaint contained no categorical denial that it was received by Midwest; a denial is only to be found by implication from the oblique averment that "there is a dispute between the parties * * * whether or not this letter was received by Midwest." In support of the motion for summary judgment respondents attached as Exhibit 1 the decision of the Secretary affirming the Commissioner's decision (R. 11–24). In this decision, the Secretary carefully considered this issue and the evidence thereon including post office records (R. 20–22). These evidentiary facts clearly support the Secretary's finding that Midwest had actual notice of the intent to cancel the lease. These facts were not challenged by petitioners by any response to the motion; their denial, if any there was, went only to the ultimate fact. Petitioners admit that in briefing the case before the Court of Appeals this point was not urged (R. 79), and their assertion (Pet. 7) that on oral argument before that court they insisted that an

issue existed does not in terms controvert the statement of the lower court that "It is not argued that this finding lacks evidence to support it" (R. 74). Even in the petition for writ of certiorari, no contention is made that the administrative finding upon the fact lacked evidence to support it. Under these circumstances both courts below correctly held that there was no genuine issue as to a material fact raised by the pleadings.

2. Petitioner Midwest Holding Company was not a "lease owner" within the meaning of section 17. The only reasonable meaning of the term "lease owner" is that it means the title holder of the lease, which in turn means the lessee or any person to whom title has passed by assignment or operation of law. That was the construction of the Secretary in deciding this case (R. 15–16). Peterson held the record title to the lease and was therefore the lease owner unless the operating agreement constituted an assignment of the lease.

Petitioners fail to establish that the Secretary and the courts below erred in determining that Midwest, as the holder of the operating agreement, was not a "lease owner." They appear first to argue that, regardless of whether the operating agreement constituted an assignment, Midwest nevertheless had such an interest in the lease as constituted it a lease owner. The authorities cited by them (Pet. 9–11) do not deal with the question here presented under section 17 of

the Mineral Leasing Act; they establish only that, for special purposes unrelated to the matter now in hand, in such diverse fields as condemnation, mechanics' liens, taxation, etc., an "owner" may be one having less than full legal title to property. The problem here is unlike any of those dealt with in the cases cited. Manifestly, it would seriously complicate the administrative function under the statute if the Secretary must weigh all possible interests created by lessees under contracts with third parties for the purpose of giving notice (cf. R. 74). Under this theory multiple notices would have to be given in many cases, but the statute clearly does not contemplate this.

Moreover, it is clear that the Secretary and the courts below correctly decided that the operating agreement here involved was not an assignment. As the court below said (R. 73), "it is certainly not technically an assignment." And a fair analysis of the agreement shows that the parties themselves did not regard it as an assignment. By paragraph 4 of the agreement (R. 29) Peterson was to file any application for extension of the permit or for leases and take such action before the Department as Midwest (designated in the agreement as "Contractor" and not as "Assignee") should request. In paragraph 9 Peterson reserved the right to cancel the agreement, and by paragraph 10 he had the right to examine and inspect operations by Midwest (R. 32–33). Most

significant of all, and a clear showing that the agreement was not an assignment of either the permit or the lease that was later issued and was not regarded as such by petitioners, is the fact that by paragraph 5 (R. 30) Peterson agreed to assign to Midwest at the latter's request any future leases obtained by Peterson. The lease in question was issued to Peterson (R. 3) but no assignment was requested and none was made. These provisions fully justify the view of the Secretary and the lower courts that Midwest was not an assignee of either the permit or the lease. It is submitted, moreover, that the Secretary's determination that the operating agreement was not an assignment is of a type which should not in any event be disturbed by the courts. *Choate* v. *Commissioner,* 324 U. S. 1.

Furthermore, while petitioners' complaint purports to be one for a declaratory judgment, it actually seeks coercive relief (R. 9). And where, as here, it is sought by judicial proceedings to compel an administrative officer to apply a given construction to a statute, the courts will consider only whether the construction adopted by the officer is clearly wrong; if it is not, the administrative determination will be sustained. *Hall* v. *Payne,* 254 U. S. 343, 347–348; *Wilbur* v. *United States,* 281 U. S. 206, 219.

Finally petitioners' effort (Pet. 12–13) to establish that the question presented is of sufficient im-

portance to justify review by this Court is answered by the record. The statute under consideration has been in operation for ten years, and the Department, using the same test applied here, during the first eight years of the statute's operation cancelled "several thousand * * * leases" (R. 17); yet petitioners admit (Pet. 8–9) that this is the first time anyone claiming to be an owner of a cancelled lease has challenged the Secretary's interpretation of the statute by judicial proceedings.

CONCLUSION

The decision below is correct and involves neither a conflict of decision nor a question of general importance. It is, therefore, respectfully submitted that the petition for a writ of certiorari should be denied.

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